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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.687 OF 2005
IN
SUMMARY SUIT NO.185 OF 2005

Mohammed Hussain Abdul Kadar)..Plaintiff

Versus

A.R. Khan @ Babu Pathan)..Defendant

Mr.K.K. Pandey for the Plaintiff.

Mr.J.P. Dubey for the Defendant.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 20TH MARCH 2006

P.C.:

. The Summary Suit has been filed claiming an amount of Rupees One lakh together with interest at the rate of 18% per annum. The Plaintiff claims that an amount of Rupees One lakh was given by him in respect of a transfer of the tenancy. It appears that the deal in which the tenament was to be transferred to the Plaintiff's name fell through and, therefore, the Plaintiff demanded back the amount from the Defendant. According to the Plaintiff, this amount has remained unpaid. Cheque issued on 7th July 2004 has been dishonoured.

2. The only defence raised by the Defendant is that payment of Rs.85,000/- out of Rupees One lakh has been made to the Plaintiff. According to the Defendant, only Rs.15,000/- had remained to be paid. The Defendant states that part payment has been made in the presence of witnesses which he has named. However, there is no material on record to indicate that such payment has in fact been made.

3. With a view to give an opportunity to the Defendant to defend his case, conditional leave granted to the Defendant on deposit of Rupees One lakh in this Court within four weeks from today failing which the Plaintiff will be entitled to a decree.

4. If the Defendant deposits the amount as aforesaid, Prothonotary & Senior Master to invest the same in a Fixed Deposit of a Nationalised Bank initially for a period of three years, to be renewed thereafter till the pendency of the Suit. The Suit shall then be transferred to the list of Commercial Causes.